



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jeffrey L. Hodges - Restoration of Forfeited
Annual Leave
File: B-223250
Date: August 27, 1987

DIGEST

During 1984, a Department of Energy employee was detailed to perform work for a Congressional Subcommittee. He was unable to take annual leave, a vacation to Europe, due to the work he was performing for the Subcommittee, and he forfeited 77 hours of annual leave. While the regulation, 5 C.F.R. § 630.308 (1984), states that the use of annual leave must be scheduled in advance in writing, the statutory provision, 5 U.S.C. § 6304(d)(1)(B) (1982), does not specifically require that a written request be made by the employee. Here, the claimant was detailed to work for a Subcommittee of the Congress for an extended period of time. He scheduled the use of his annual leave, in advance, in a timely manner and such use was approved by Subcommittee officials. In these circumstances, the intent of the statutory requirement of "advance scheduling" of annual leave has been adequately met. The 77 hours of annual leave which was forfeited may be restored.

DECISION

This decision is in response to a request by Mr. J. M. Schulman, Director of Personnel, Department of Energy (DOE), for a determination as to whether 77 hours of annual leave which was forfeited by Mr. Jeffrey L. Hodges, a former employee of DOE, may be restored. For the reasons stated later in this decision, we conclude that the 77 hours of forfeited annual leave may be restored.

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BACKGROUND

The pertinent facts involved in this claim are as follows. During 1984, while employed by DOE, Mr. Hodges was detailed to perform work for the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, United States House of Representatives. According to Mr. Michael F. Barrett, Jr., Chief Counsel and Staff Director of the Subcommittee, Mr. Hodges was unable to take annual leave during 1984 due to the work he was performing for the Subcommittee. Mr. Barrett states that Mr. Hodges was involved in highly significant matters and that, on several occasions, officials of the Subcommittee asked Mr. Hodges to postpone his planned vacation to Europe due to the work requirements of the Subcommittee.

The DOE declined to restore Mr. Hodges' forfeited annual leave citing section 630.308 of title 5, Code of Federal Regulations. Section 630.308 states, in essence, that annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration provided use of the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. Mr. Hodges contends that he has met the intent of 5 U.S.C. § 6304(d) regarding the scheduling of the annual leave in question. He states that the circumstances of his detail to the Subcommittee should satisfy the statutory requirement of "advance scheduling."

OPINION

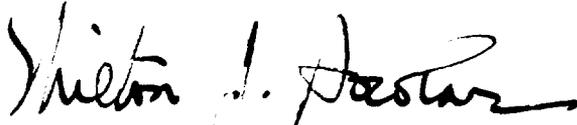
Section 6304(d)(1)(B) of title 5, United States Code (1982), provides that excess annual leave which is forfeited at the end of the leave year and which was lost because of exigencies of the public business shall be restored to the employee when the annual leave was scheduled in advance. As stated earlier, the implementing regulation, section 630.308, title 5, Code of Federal Regulations, promulgated by the Office of Personnel Management under the authority of 5 U.S.C. § 6311, requires that, in order to be restored, the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

In interpreting the statutory provisions, this Office has stated that advance scheduling is a requirement imposed by the plain language of the law itself. Michael Dana, et al., 56 Comp. Gen. 470 (1977). In that decision, we held that

the advance scheduling requirement is imposed by law and is clearly set forth in both the implementing regulations and the legislative history of the law.

While the regulation states that the use of annual leave must be scheduled in advance and in writing, the statute itself does not specifically require that a written request be made by the employee. Here, Mr. Hodges was detailed to work for the Subcommittee for an extended period of time. He scheduled the use of his leave in advance and in a timely manner and such use was approved by officials of the Subcommittee. However, Mr. Hodges was unable to use the leave, as scheduled, due to the exigency of the public business, i.e., the work requirements of the Subcommittee during the period time in question.

We recognize that the Committees of the Congress do not operate with the same degree of formality as the departments and agencies in the Executive Branch. In these circumstances, we are of the opinion that the intent of the statutory requirement of "advance scheduling" of annual leave has been adequately met. Accordingly, the 77 hours of annual leave, which was forfeited by Mr. Hodges during the 1984 leave year, may be restored.

for 
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of the United States